

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**THERESA V. MARTINEZ**

Claimant

vs.

**TOPEKA DAY CARE ASSOCIATION**

Respondent

AND

NEW YORK UNDERWRITERS INSURANCE CO.

Insurance Carrier

Docket No. 165,295

## ORDER

**ON** the 5th day of April, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Floyd V. Palmer, dated March 1, 1994, came on before the Appeals Board for oral argument.

## APPEARANCES

Claimant appeared by her attorney Paul D. Post of Topeka, Kansas. Respondent and insurance carrier appeared by their attorney C. Keith Saylor of Topeka, Kansas. There were no other appearances.

## RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge, including the documents filed of record with the Division of Workers Compensation in this docketed matter, the transcript of the Preliminary Hearing before Administrative Law Judge Floyd V. Palmer on February 17, 1994, and the exhibits

attached thereto. This proceeding was initially remanded to the Administrative Law Judge by the Appeals Board in its Order dated April 27, 1994, to request additional findings. The Order of Administrative Law Judge Floyd V. Palmer dated April 28, 1994, is now included as part of the record considered herein.

### **ISSUES**

The Administrative Law Judge denied claimant's application for vocational rehabilitation assessment which prompted the claimant to seek this review.

The issues before the Appeals Board are:

- (1) Whether the Appeals Board has jurisdiction to review this matter.
- (2) Whether the claimant is entitled to vocational rehabilitation assessment.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board, for preliminary hearing purposes, makes the following findings of fact and conclusions of law:

- (1) In his Order of April 28, 1994, Administrative Law Judge Floyd V. Palmer denied claimant's request for vocational rehabilitation benefits for two reasons: 1) That claimant had not sustained her burden to prove her injury arose out of and in the course of her employment with the respondent; and 2) claimant would still be working for the respondent if she had not been released due to budget concerns.

The Appeals Board has jurisdiction under K.S.A. 44-534a to review the finding of the Administrative Law Judge pertaining to whether claimant sustained accidental injury arising out of and in the course of her employment with the respondent. However, the Appeals Board does not have jurisdiction to review the finding of the Administrative Law Judge pertaining to the denial of vocational rehabilitation benefits based upon the factual determination that claimant is not entitled to those benefits based upon the evidence presented to date. The jurisdiction of the Appeals Board to review preliminary hearing matters is limited to those situations which involve one of the disputed issues set forth in K.S.A. 44-534a(a)(2), or where the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing in which event jurisdiction is granted the Appeals Board under K.S.A. 44-551(b)(2)(A).

As the Administrative Law Judge has not exceeded his jurisdiction in determining whether claimant is entitled vocational rehabilitation benefits under the facts presented, the Appeals Board lacks jurisdiction to review that finding. As the Appeals Board is unable to modify the finding and order of the Administrative Law Judge for the reason previously stated, the issue whether the alleged accidental injury arose out of and in the course of her employment is moot and need not be addressed at this time.

### **AWARD**

**WHEREFORE**, it is the finding and decision of the Appeals Board that it is without jurisdiction to review the Preliminary Hearing Orders of the Administrative Law Judge

Floyd V. Palmer dated March 1, 1994, and April 28, 1994, thereby leaving said orders in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Paul D. Post, 5897 SW 29th Street, Topeka, Kansas 66614  
C. Keith Sayler, PO Box 949, Topeka, Kansas 66601  
Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director